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Attorneys for Plaintiff ThermaPure, Inc.

The Honorable Robert H. Whaley

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

THERMAPURE, INC., a California
corporation,

Plaintiff,

v.

JUST RIGHT CLEANING &
CONSTRUCTION, INC., a Washington
corporation,

Defendant.

JUST RIGHT CLEANING &
CONSTRUCTION, INC., a Washington
corporation,

Counterclaimant,

v.

THERMAPURE, INC., a California
corporation,

Counterdefendant.

CASE NO. CV-11-00431-RHW

**STIPULATED PROTECTIVE
ORDER REGARDING
MANAGEMENT AND USE OF
INFORMATION PRODUCED IN
DISCOVERY**

PROTECTIVE ORDER
(CV-11-000431-RHW)

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1 Pursuant to Federal Rule of Civil Procedure 26(c) and Federal Rule of
2 Evidence 502(d), it is hereby ordered that the following Protective Order be
3 entered in this matter and that the parties shall follow the procedures set forth
4 below with respect to information, documents, or things produced in this
5 litigation:

6 1. All documents produced in the course of discovery, including initial
7 disclosures, all responses to discovery requests, all deposition testimony and
8 exhibits, electronically stored information, and all other materials which may be
9 subject to restrictions on disclosure for good cause and information derived
10 directly therefrom, including but not limited to affidavits and declarations and
11 exhibits attached thereto (hereinafter collectively “documents”), shall be subject to
12 this Order concerning confidential information as set forth below. As there is a
13 presumption in favor of open and public judicial proceedings in the federal courts,
14 this Order shall be strictly construed in favor of public disclosure and open
15 proceedings wherever possible. The Order is also subject to the Local Rules of
16 this District and the Federal Rules of Civil Procedure on matters of procedure and
17 calculation of time periods.

18 2. A party may designate documents as confidential and restricted in
19 disclosure under this Order by placing or affixing the words “CONFIDENTIAL”
20 or “ATTORNEYS’ EYES ONLY” on the document in a manner that will not
21 interfere with the legibility of the document and that will permit complete removal
22 of the designation. Documents shall be designated CONFIDENTIAL or
23 ATTORNEYS EYES ONLY prior to or at the time of the production or disclosure
24 of the documents. When electronically stored information is produced which
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1 cannot itself be marked with the designation CONFIDENTIAL or ATTORNEYS
2 EYES ONLY, the physical media on which such electronically stored information
3 is produced shall be marked with the applicable designation. The party receiving
4 such electronically stored information shall then be responsible for labeling any
5 copies that it creates thereof, whether electronic or paper, with the applicable
6 designation. By written stipulation the parties may agree temporarily to designate
7 original documents that are produced for inspection CONFIDENTIAL or
8 ATTORNEYS EYES ONLY even though the original document being produced
9 have not themselves been so labeled. All information learned in the course of such
10 an inspection shall be protected in accordance with the stipulated designation. The
11 copies of documents that are selected for copying during such an inspection shall
12 be marked CONFIDENTIAL or ATTORNEYS EYES ONLY as required under
13 this Order and thereafter the copies shall be subject to protection under this Order
14 in accordance with their designation.

15 3. Any party may designate documents as CONFIDENTIAL or
16 ATTORNEYS EYES ONLY upon making a good faith determination that the
17 documents contain information protected from disclosure by statute or that should
18 be protected from disclosure as confidential personal information, medical or
19 psychiatric information, trade secrets, personnel records, or such other sensitive
20 commercial information that is not publicly available. Public records and other
21 information or documents that are publicly available may not be designated as
22 CONFIDENTIAL or ATTORNEYS EYES ONLY.

23 4. The Parties shall not designate any document as "CONFIDENTIAL"
24 or "ATTORNEYS' EYES ONLY" without first making a determination that
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1 protection under Federal Rule of Civil Procedure 26(c) is warranted. Material
2 designated "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" shall be used
3 by the parties to this litigation solely for the purpose of conducting this litigation,
4 and not for any other purpose.

5 5. Restrictions and obligations set forth herein relating to designated
6 documents shall not apply to any information which the parties agree, or the Court
7 rules, (a) was or becomes public knowledge other than a result of disclosure by
8 the receiving party, or (b) has come or shall come into the receiving party's
9 legitimate possession independently of the Providing Party. Such restrictions and
10 obligations shall not be deemed to prohibit discussions with any person of any
11 designated documents if the parties agree or the Court rules that said person
12 already had or obtained possession thereof legitimately.

13 6. Deposition testimony shall be deemed CONFIDENTIAL or
14 ATTORNEYS EYES ONLY only if designated as such. Such designation shall
15 be specific as to the portions of the transcript or any exhibit to be designated as
16 CONFIDENTIAL or ATTORNEYS EYES ONLY. Thereafter, the deposition
17 transcripts and any those portions so designated shall be protected as
18 CONFIDENTIAL or ATTORNEYS EYES ONLY, pending objection, under the
19 terms of this Order. By stipulation read into the record the parties may agree
20 temporarily to designate an entire deposition and the exhibits used therein for
21 protection under this Order pending receipt and review of the transcript. In such a
22 circumstance, the parties shall review the transcript within 30 days of the receipt
23 thereof and specifically designate the testimony and exhibits that will be protected
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1 under this Order. Thereafter only the specifically designated testimony and
2 exhibits shall be protected under the terms of this Order.

3 7. Documents designated CONFIDENTIAL under this Order shall not
4 be used or for any purpose whatsoever other than the prosecution or defense of
5 this action, and of any appeal thereof. The parties and counsel for the parties shall
6 not disclose or permit the disclosure of any documents designated
7 CONFIDENTIAL to any third person or entity except as set forth in
8 subparagraphs (i) – (vii). Subject to these requirements, the following categories
9 of persons may be allowed to review documents that have been designed as
10 CONFIDENTIAL.

- 11 a. Outside Counsel of Record: Outside counsel of record for the
12 parties and employees and agents of counsel who have
13 responsibility for the preparation and trial of the action.
- 14 b. Parties: Parties and employees of a party to this Order.
- 15 c. Trial Court: The Court and its personnel.
- 16 d. Court Reporters and Recorders: Court reporters and recorders
17 engaged for deposition.
- 18 e. Persons Creating or Receiving Documents: Any person who
19 authored or recorded the designated document, and any person
20 who has previously seen or was aware of the designated
21 document.
- 22 f. Consultants, Investigators and Experts: Consultants,
23 investigators, or experts employed by the parties or counsel for
24 the parties to assist in the preparation and trial of this action or
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1 proceeding, but only after such persons have completed the
2 certification contained in Attachment A.

3 g. Others by Consent: Other persons only by written consent of the
4 producing party or upon order of the Court and on such
5 conditions as may be agreed or ordered. All such persons shall
6 execute the certification contained in Attachment A.

7 8. Documents designated ATTORNEYS EYES ONLY under this Order
8 shall not be used for any purpose whatsoever other than the prosecution or defense
9 of this action, and of any appeal thereof. The parties and counsel for the parties
10 shall not disclose or permit the disclosures of any documents designated
11 ATTORNEYS EYES ONLY to any third person or entity except as set forth in
12 subparagraphs (i)-(vi). Subject to these requirements, the following categories of
13 persons may be allowed to review documents that have been designated
14 ATTORNEYS EYES ONLY.

15 a. Outside Counsel of Record: Outside counsel of record for the
16 parties and employees and agents of counsel who have
17 responsibility for the preparation and trial of the action.

18 b. The Court: The Court and its personnel.

19 c. Court Reporters and Recorders: Court reporters and recorders
20 engaged for deposition.

21 d. Persons Creating or Receiving Documents: Any person who
22 authored or recorded the designated document, and any person
23 who has previously seen or was previously aware of the
24 designated document.

1 e. Consultants Investigators and Experts: Consultants,
2 investigators, or experts employed by the parties or counsel for
3 the parties to assist in the preparation and trial of this action or
4 proceeding, but only after such persons have completed the
5 certificate contained in Attachment A.

6 f. Others by Consent: Other persons only by written consent of the
7 producing party or upon order of the Court and on such
8 conditions as may be agreed or ordered. All such persons shall
9 execute the certification contained in Attachment A.

10 9. A party shall not be obligated to challenge the propriety of a
11 CONFIDENTIAL or ATTORNEYS' EYES ONLY designation at the time made
12 and the failure to do so shall not preclude a subsequent challenge thereto. In the
13 event that any party to this litigation disagrees with any such designation, such
14 party shall provide to the producing party a written notice of its disagreement with
15 the designation. Within ten (10) business days of the written notice the producing
16 party shall respond to the challenging party identifying in writing the bases for the
17 asserted designation. The producing party shall bear the burden of showing that
18 its asserted designation is warranted. The parties shall first try to resolve any
19 dispute in good faith on an informal basis. If the dispute cannot be resolved, the
20 party challenging the designation may request appropriate relief from the Court.
21 Any request for relief from the Court may not be made less than 25 days
22 following written notice of the challenge of the designation in dispute. Any
23 disputed documents or other material shall continue to be treated as confidential
24 under this Protective Order until the Court rules otherwise.

1 10. Any party seeking to file any document(s) designated by the
2 producing party as CONFIDENTIAL or ATTORNEYS' EYES ONLY must
3 notify the producing party three days in advance of the proposed filing and
4 determine if the producing party opposes an application to file the designated
5 document(s) under seal.

6 11. CONFIDENTIAL or ATTORNEYS' ONLY documents mistakenly
7 produced or disclosed without an appropriate designation may be subsequently
8 designated by the producing person pursuant to the terms of this Order. Such
9 correction and notice thereof shall be made in writing, accompanied by substitute
10 copies of each item, appropriately marked. Within five days of receipt of the
11 substitute copies, the receiving party shall return or destroy the previously
12 unmarked items and all copies thereof.

13 12. The inadvertent production in the course of discovery in this action
14 of any document or information (whether or not designated as CONFIDENTIAL
15 or ATTORNEYS' EYES ONLY) shall not be deemed to waive whatever
16 attorney-client privilege, work product protection or other privileges or immunity
17 that would otherwise attach to the document or information produced or to other
18 documents or information, as long as the producing party or person, promptly
19 after discovery, notifies the other party or parties of the claim of privilege or other
20 protection or immunity. Upon such notice, the other party or parties shall
21 promptly destroy all copies of the documents or information referred to, including
22 any summaries thereof, and notify the producing party that it has done so. Such
23 destruction and notice shall not constitute an acknowledgment that the claimed
24 document or information is in fact privileged or entitled to protection or immunity
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1 and does not preclude the receiving party from seeking to compel production of
2 the materials for reason other than its inadvertent production.

3 13. This Order shall govern the handling of documents and the
4 information they contain prior to trial, and shall govern the handling after trial of
5 documents and information that do not become part of the record at trial. With
6 respect to documents or information to be used at trial, the parties shall meet and
7 confer after the pretrial conference to reach an agreement as to the confidentiality
8 of information to be used at trial. If necessary, the parties will also develop a
9 method for maintaining the confidentiality of such information and documents at
10 trial.

11 14. After final termination of this action, counsel for the receiving party
12 shall return all copies of documents designated as CONFIDENTIAL or
13 ATTORNEYS' EYES ONLY to counsel for the Providing Party, or shall destroy
14 such materials, and shall certify either the return or the destruction of all such
15 materials to counsel for the Providing Party. In addition, counsel for the receiving
16 party shall either return all copies provided to other persons or shall obtain a
17 certification of destruction from such persons. Except as specifically provided
18 herein, the terms, conditions, and limitations of this Protective Order shall survive
19 the termination of this action.

20 15. Nothing herein shall be deemed to constitute a waiver of any
21 objection a producing party may have to any request for production of documents
22 or other requested discovery. Nothing herein shall prevent any party from
23 objecting to production of documents or objecting to other discovery requests on
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1 any available grounds, or from seeking alternative protective orders from the
2 Court.

3 16. This Order is entered based on the representations and agreements of
4 the Parties and for the purpose of facilitating discovery. Nothing herein shall be
5 construed or presented as a judicial determination that any documents or
6 information designated "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY"
7 by counsel or the Parties is subject to protection under Federal Rule of Civil
8 Procedure 26(c) or otherwise until such time as the Court may rule on a specific
9 document or issue. The designation of documents for protection under this Order
10 does not mean that the document has any status or protection by statute or
11 otherwise except to the extent and for the purpose of this Order. The designation
12 "CONFIDENTIAL" or "ATTORNEYS EYES ONLY" does not mean that the
13 document has any status or protection by statute or otherwise except to the extent
14 and for the purposes of this Order.

15 17. Any pleadings filed with the Court will not be protected by this Order
16 unless a motion is filed to enter a Protective Order with respect to a particular
17 pleading.

18 18. The Court shall have jurisdiction to make any amendments,
19 modifications or additions to this Protective Order as it deems appropriate.

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DATED this 28th day of June, 2012.

1 The Parties, through their undersigned counsel of record, hereby stipulate
2 and agree to entry of this Stipulated Protective Order.

3 SUMMIT LAW GROUP PLLC

4 By /s/ J. Chad Mitchell

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EXHIBIT A

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The Honorable Robert H. Whaley

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Plaintiff,

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JUST RIGHT CLEANING &
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JUST RIGHT CLEANING &
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Counterclaimant,

v.

THERMAPURE, INC., a California
corporation,

Counterdefendant.

CASE NO. C11-00431-RHW

DECLARATION

1 I, _____, declare as follows:

2 1. My address is _____.

3 My present occupation is _____.

4 2. I have received a copy of the Protective Order in this action. I have
5 carefully read and understand the provisions of the Protective Order.

6 3. I will comply with all of the provisions of the Protective Order.

7
8 Executed on _____ at
9 _____.

10 I declare under penalty of perjury under the laws of the United States of
11 America that the foregoing is true and correct.